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8 ATTORNEYS FOR DEFENDANTS  
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, SAN  
9 JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY; RHONDA  
REARDON; MICHAEL KRAMAN; CRAIG YOUNG; SCOTT SCHOEFFEL;  
10 and ROSS CHUN

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

13 IN RE: TOLL ROADS LITIGATION

Case No: 8:16-cv-00262 AG (JCGx)

14  
15 PENNY DAVIDI BORSUK; DAVID  
COULTER; EBRAHIM E. MAHDA; TODD  
16 QUARLES; TODD CARPENTER; LORI  
MYERS; DAN GOLKA; and JAMES  
17 WATKINS on Behalf of Themselves and All  
Others Similarly Situated,

18 Plaintiffs,

19 vs.

20 FOOTHILL/EASTERN TRANSPORTATION  
CORRIDOR AGENCY; SAN JOAQUIN  
21 HILLS TRANSPORTATION CORRIDOR  
AGENCY; ORANGE COUNTY  
22 TRANSPORTATION AUTHORITY;  
3M COMPANY; BRiC-TPS LLC; RHONDA  
23 REARDON; MICHAEL KRAMAN; CRAIG  
YOUNG; SCOTT SCHOEFFEL; ROSS  
24 CHUN; DARRELL JOHNSON; LORI  
DONCHAK; WILLIAM P. DUFFY;  
25 COFIROUTE USA, LLC; and DOES 3-10,  
26 inclusive,  
27

28 Defendants.

**SECOND AMENDED  
STIPULATED PROTECTIVE  
ORDER**

Complaint Served: Jan. 15, 2016  
Removed: Feb. 16, 2016

1     **1.     PURPOSE AND LIMITS OF THIS ORDER.**

2           Discovery in this action is likely to involve confidential, proprietary, or  
3 private information requiring special protection from public disclosure and from  
4 use for any purpose other than this litigation. Thus, the Court enters this Second  
5 Amended Stipulated Protective Order. This Order does not confer blanket  
6 protections on all disclosures or responses to discovery, and the protection it gives  
7 from public disclosure and use extends only to the specific material entitled to  
8 confidential treatment under the applicable legal principles. Specifically, this  
9 Order provides protections for material including personally-identifiable  
10 information (“PII”) of (i) drivers who drove on the toll roads in Orange County,  
11 California (State Routes 91, 73, 133, 241, or 261), (ii) individuals and entities that  
12 own or owned vehicles that drove on the toll roads in Orange County, California,  
13 (iii) individuals and entities who have an account with the Orange County  
14 Transportation Authority, Foothill/Eastern Transportation Corridor Agency, San  
15 Joaquin Hills Transportation Corridor Agency, or another toll agency in California,  
16 and (iv) individuals and entities that provided information to the Orange County  
17 Transportation Authority, Foothill/Eastern Transportation Corridor Agency, San  
18 Joaquin Hills Transportation Corridor Agency, or their respective designated  
19 agents. Any materials previously produced and designated as “CONFIDENTIAL  
20 – FOR ATTORNEYS’ EYES ONLY” pursuant to any prior protective orders  
21 entered in this case shall be treated as material designated “CONFIDENTIAL”  
22 pursuant to this Second Amended Protective Order and treatment of such material  
23 shall be in compliance with the terms of this Order. However, to the extent a non-  
24 party has already executed an agreement to be bound by a prior protective order in  
25 this action, that non-party shall not be required to execute an Agreement to Be  
26 Bound (Exhibit A) as a result of the entry of this Second Amended Protective  
27 Order. Instead, the non-party shall be deemed to have executed An Agreement to  
28 Be Bound (Exhibit A), and shall be subject to the terms of this Amended Protective

1 Order, which shall be provided to the non-party. This Order does not  
2 automatically authorize the filing under seal of material designated under this  
3 Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file  
4 anything under seal. This Order does not govern the use at trial of material  
5 designated under this Order.

6 **2. DESIGNATING PROTECTED MATERIAL.**

7 **2.1 Over-Designation Prohibited.**

8 Any party or non-party who designates information or items for protection  
9 under this Order as "CONFIDENTIAL" (a "designator") must only designate  
10 specific material that qualifies under the appropriate standards. To the extent  
11 practicable, only those parts of documents, items, or oral or written  
12 communications that require protection shall be designated. Mass, indiscriminate,  
13 or routinized designations are prohibited. Unjustified designations expose the  
14 designator to sanctions, including the Court's striking all confidentiality  
15 designations made by that designator. Designation under this Order is allowed  
16 only if the designation is necessary to protect material that, if disclosed to persons  
17 not authorized to view it, would cause competitive or other recognized harm,  
18 and/or could expose the producing party to potential civil or criminal liability  
19 under local, state, federal, or international law. Material may not be produced  
20 under this Protective Order to the extent it relates to any past or ongoing criminal  
21 or grand jury investigation. Material may not be designated if it has been made  
22 public, or if designation is otherwise unnecessary to protect a secrecy interest. If a  
23 designator learns that information or items that it designated for protection do not  
24 qualify for protection at all or do not qualify for the level of protection initially  
25 asserted, that designator must promptly notify all parties that it is withdrawing the  
26 mistaken designation.

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2           **2.2   Manner and Timing of Designations.**

3           Designation under this Order requires the designator to affix the applicable  
4 legend (“CONFIDENTIAL”) to each page that contains protected material. For  
5 testimony given in deposition or other proceeding, the designator shall specify all  
6 protected testimony. It may make that designation during the deposition or  
7 proceeding, or may invoke, on the record or by written notice to all parties on or  
8 before the next business day, a right to have up to 60 days from the deposition or  
9 proceeding to make its designation.

10           **2.2.1** A party or non-party that makes original documents or materials  
11 available for inspection need not designate them for protection until after the  
12 inspecting party has identified which material it would like copied and produced.  
13 During the inspection and before the designation, all material shall be treated as  
14 CONFIDENTIAL. After the inspecting party has identified the documents it wants  
15 copied and produced, the producing party must designate the documents, or  
16 portions thereof, that qualify for protection under this Order.

17           **2.2.2** Parties shall give advance notice if they expect a deposition or  
18 other proceeding to include designated material so that the other parties can ensure  
19 that only authorized individuals are present at those proceedings when such  
20 material is disclosed or used. The use of a document as an exhibit at a deposition  
21 shall not in any way affect its designation. Transcripts containing designated  
22 material shall have a legend on the title page noting the presence of designated  
23 material, and the title page shall be followed by a list of all pages (including line  
24 numbers as appropriate) that have been designated, and the level of protection  
25 being asserted. The designator shall inform the court reporter of these  
26 requirements. Any transcript that is prepared before the expiration of the 60-day  
27 period for designation shall be treated during that period as if it had been  
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1 designated CONFIDENTIAL unless otherwise agreed. After the expiration of the  
2 60-day period, the transcript shall be treated only as actually designated.

3 **2.3 Inadvertent Failures to Designate.**

4 An inadvertent failure to designate does not, standing alone, waive  
5 protection under this Order. Upon timely assertion or correction of a designation,  
6 all recipients must make reasonable efforts to ensure that the material is treated  
7 according to this Order.

8 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

9 All challenges to confidentiality designations shall proceed under L.R. 37-1  
10 through L.R. 37-4.

11 **4. ACCESS TO DESIGNATED MATERIAL.**

12 **4.1 Basic Principles.**

13 A receiving party may use designated material only for this litigation.  
14 “Receiving party” as used in this Section refers to all parties to this action who  
15 may receive designated material as the result of all discovery in this litigation  
16 being served on all parties. Designated material may be disclosed only to the  
17 categories of persons and under the conditions described in this Order for purposes  
18 related to this litigation.

19 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
20 **Approval.**

21 Unless otherwise ordered by the Court or permitted in writing by the  
22 designator, a receiving party may disclose any material designated  
23 CONFIDENTIAL only to:

24 **4.2.1** The receiving party’s counsel of record in this action and  
25 employees of said counsel of record to whom disclosure is reasonably necessary;

26 **4.2.2** The officers, directors, in-house counsel, and employees of the  
27 receiving party to whom disclosure is reasonably necessary;  
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1           **4.2.3** Experts retained by the receiving party's counsel of record to  
2 whom disclosure is reasonably necessary, and who have signed the Agreement to  
3 Be Bound (Exhibit A);

4           **4.2.4** Third Parties who are the purported source of the designated  
5 information, only to the extent disclosure is reasonably necessary to verify the  
6 source of the information, and only if the third party source has signed the  
7 Agreement to Be Bound (Exhibit A);

8           **4.2.5** The Court and its personnel;

9           **4.2.6** Outside court reporters and their staff, professional jury or trial  
10 consultants, and professional vendors to whom disclosure is reasonably necessary,  
11 and who have signed the Agreement to Be Bound (Exhibit A);

12           **4.2.7** During their depositions, witnesses in the action to whom  
13 disclosure is reasonably necessary and who have signed the Agreement to Be  
14 Bound (Exhibit A); and

15           **4.2.8** The author or recipient of a document containing the material,  
16 or a custodian or other person who otherwise possessed or knew the information.

17 **5. PROSECUTION BAR RELATED TO CONFIDENTIAL**  
18 **INFORMATION AND PRODUCTION OF PII IN THIS CASE.**

19           Plaintiffs contend Defendants have mismanaged the PII of Plaintiffs and  
20 putative class members and seek discovery about the use and dissemination of  
21 putative class members' PII. Defendants have stated concerns that producing  
22 documents pursuant to discovery in this action under the Federal Rules of Civil  
23 Procedure may subject them to liability including under *California Streets &*  
24 *Highways Code* Section 31490. Plaintiffs agree that Defendants may redact from  
25 any document or data produced in response to a discovery request the PII of  
26 putative class members. Upon entry of this Order, Defendants shall make  
27 reasonable efforts to redact from documents to be produced in discovery in this  
28 action PII of putative class members, but not evidence that PII was provided to

1 third parties, unless otherwise agreed to by the Parties. By entering into this  
2 Stipulation, Plaintiffs will not assert in this litigation or any future litigation that  
3 the provision of any materials, information, or data containing their own or  
4 putative class members' PII that is provided by Defendants to Plaintiffs pursuant to  
5 this Second Amended Stipulated Protective Order or a prior protective order in this  
6 case, is a violation of *California Streets & Highways Code* Section 31490.  
7 Notwithstanding this stipulation, the Defendants' providing of PII to anyone other  
8 than those authorized by this or a prior protective order will not impact any claims  
9 or entitlement to equitable and injunctive relief of the Plaintiffs or the putative  
10 class members based on the Defendants having provided PII to any other third  
11 party. Nothing in this Second Amended Protective Order shall be deemed to  
12 waive, limit or restrict the right of any party hereto to assert or maintain any  
13 objection to or obtain a protective order regarding a specific discovery request.

14 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
15 **PRODUCED IN OTHER LITIGATION.**

16 **6.1 Subpoenas and Court Orders.**

17 This Order in no way excuses noncompliance with a lawful subpoena or  
18 court order issued in other litigation. The purpose of the duties described in this  
19 section is to alert the interested parties to the existence of this Order and to give the  
20 designator an opportunity to protect its confidentiality interests in the court where  
21 the subpoena or order issued.

22 **6.2 Notification Requirement.**

23 If a party is served with a subpoena or a court order issued in other litigation  
24 that compels disclosure of any information or items designated in this action as  
25 CONFIDENTIAL, and if the party is not the designator, that party must:

26 **6.2.1** Promptly notify the designator in writing. Such notification  
27 shall include a copy of the subpoena or court order;  
28

1           **6.2.2** Promptly notify in writing the party who caused the subpoena  
2 or order to issue in the other litigation that some or all of the material covered by  
3 the subpoena or order is subject to this Order. Such notification shall include a  
4 copy of this Order; and

5           **6.2.3** Cooperate with all reasonable procedures sought by the  
6 designator whose material may be affected.

7           **6.3 Wait For Resolution of Protective Order.**

8           If the designator timely seeks a protective order, the party served with the  
9 subpoena or court order in other litigation shall not produce any information that  
10 was or is designated in this action as CONFIDENTIAL before a determination by  
11 the court where the subpoena or order issued, unless the party has obtained the  
12 designator's permission. The designator shall bear the burden and expense of  
13 seeking protection of its confidential material in that court.

14       **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL.**

15           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
16 designated material to any person or in any circumstance not authorized under this  
17 Order, it must immediately (1) notify in writing the designator of the unauthorized  
18 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
19 designated material, (3) inform the person or persons to whom unauthorized  
20 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
21 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

22       **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
23       **PROTECTED MATERIAL.**

24           When a producing party gives notice that certain inadvertently produced  
25 material is subject to a claim of privilege or other protection, the obligations of the  
26 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
27 This provision is not intended to modify whatever procedure may be established in  
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1 an e-discovery order that provides for production without prior privilege review  
2 pursuant to Federal Rule of Evidence 502(d) and (e).

3 **9. FILING UNDER SEAL.**

4 Without written permission from the designator or a Court order, a party  
5 may not file in the public record in this action any designated material. A party  
6 seeking to file under seal any designated material must comply with L.R. 79-5.1.  
7 To avoid unnecessary requests to file under seal, a party seeking to use or file any  
8 designated material in a public filing shall first confer with the designator,  
9 identifying the specific items to be used or filed. With the designator's written  
10 authorization, designated material may be publicly filed without requesting the  
11 Court's permission to file under seal.

12 Filings may be made under seal only pursuant to a court order authorizing  
13 the sealing of the specific material at issue. The fact that a document has been  
14 designated under this Order is insufficient to justify filing under seal. Instead,  
15 parties must explain the basis for confidentiality of each document sought to be  
16 filed under seal. Because a party other than the designator will often be seeking to  
17 file designated material, cooperation between the parties in preparing, and in  
18 reducing the number and extent of, requests for under seal filing is essential. If a  
19 receiving party's request to file designated material under seal pursuant to L.R. 79-  
20 5.1 is denied by the Court, then the receiving party may file the material in the  
21 public record unless (1) the designator seeks reconsideration within four (4) days  
22 of the denial, or (2) as otherwise instructed by the Court.

23 **10. FINAL DISPOSITION.**

24 Within 60 days after the final disposition of this action, each party shall  
25 return all designated material to the designator or destroy such material, including  
26 all copies, abstracts, compilations, summaries, and any other format reproducing or  
27 capturing any designated material. The receiving party must submit a written  
28 certification to the designator by the 60-day deadline that (1) identifies (by

1 category, where appropriate) all the designated material that was returned or  
2 destroyed, and (2) affirms that the receiving party has not retained any copies,  
3 abstracts, compilations, summaries, or any other format reproducing or capturing  
4 any of the designated material.  
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6

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, SUBJECT TO  
8 THE COURT'S APPROVAL.

9  
10 Date: January 30, 2018

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ASHLEY J. REMILLARD

12 By: /s/ Benjamin Z. Rubin

13 Benjamin Z. Rubin

14 Attorneys for Defendants  
15 FOOTHILL/EASTERN  
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17 AGENCY; SAN JOAQUIN HILLS  
18 TRANSPORTATION CORRIDOR  
19 AGENCY; RHONDA REARDON;  
20 MICHAEL KRAMAN; CRAIG  
21 YOUNG; SCOTT SCHOEFFEL; and  
22 ROSS CHUN

23  
24 Date: January 30, 2018

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22 M. Lois Bobak

23 Attorneys for Defendants  
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1 Date: January 30, 2018

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15 Date: January 30, 2018

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19 *Interim Co-Lead Class Counsel*

21 Date: January 30, 2018

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24 *Interim Co-Lead Class Counsel*

1 Date: January 30, 2018  
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4 By: /s/ Michael J. Flannery

Michael J. Flannery

5 *Interim Co-Lead Class Counsel*

6  
7 Date: January 30, 2018

COFIROUTE USA, LLC  
KEN E. STEELMAN

8 By: /s/ Ken Steelman


Ken Steelman

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10 Attorneys for Defendant  
11 COFIROUTE USA, LLC  
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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: February 5, 2018

By:   
Magistrate  
United States District Judge,  
Hon. ~~Andrew J. Guilford~~  
Jay C. Gandhi

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**EXHIBIT A**

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare that I  
have read in its entirety and understand the Second Amended Stipulated Protective  
Order that was issued by the United States District Court for the Central District of  
California on \_\_\_\_\_ [date] in the matter of *In re: Toll Roads*  
*Litigation, Penny Davidi Borsuk, et al. v. Foothill/Eastern Transportation*  
*Corridor Agency, et al.*, U.S. District Court C.D. C.A. Case No. 8:16-cv-00262 AG  
(JCGx). I agree to comply with and to be bound by all terms of the Second  
Amended Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of  
contempt. I also understand and acknowledge that the Parties to the above-  
referenced action may have legal remedies available to them against me for failure  
to comply with the Second Amended Stipulated Protective Order. I solemnly  
promise that I will not disclose in any manner any information or item that is  
subject to the Second Amended Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of the Second Amended Stipulated  
Protective Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purposes of enforcing the terms  
of the Second Amended Stipulated Protective Order, even if such enforcement  
proceedings occur after the termination of the above-referenced action. I hereby  
appoint \_\_\_\_\_ [print or type full name]  
of \_\_\_\_\_ [print  
or type full address and phone number] as my California agent for service of

1 process in connection with the above referenced action or any proceedings related  
2 to enforcement of the Second Amended Stipulated Protective Order.

3 Date: \_\_\_\_\_

4  
5 At: \_\_\_\_\_

6 [City and State Where Sworn and Signed]

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9 Printed Name: \_\_\_\_\_

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11 Signature: \_\_\_\_\_

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### SIGNATURE CERTIFICATION

Pursuant to U.S. District Court for the Central District of California Local rule 5-4.3.4(a)(2)(i), I hereby attest and certify that the content of this document is acceptable to all counsel listed above, and that I have obtained said counsel's authorization to affix their electronic signatures to this document.

/s/ Benjamin Z. Rubin  
Benjamin Z. Rubin



1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Orange, State of California. I am over the  
4 age of 18 and am not a party to the within action; my business address is c/o  
Nossaman LLP, 18101 Von Karman Avenue, Suite 1800, Irvine, CA 92612.

5 On January 30, 2018, I served the following documents: Second Amended  
6 Stipulated Protective Order on parties to the within action as follows:

7 ☐ (By U.S. Mail) On the same date, at my said place of business, Copy  
8 enclosed in a sealed envelope, addressed as shown on the attached service  
9 list was placed for collection and mailing following the usual business  
10 practice of my said employer. I am readily familiar with my said employer's  
11 business practice for collection and processing of correspondence for  
mailing with the United States Postal Service, and, pursuant to that practice,  
the correspondence would be deposited with the United States Postal  
Service, with postage thereon fully prepaid, on the same date at Irvine,  
California.

12 ☐ (By Overnight Service) I served a true and correct copy by overnight  
13 delivery service for delivery on the next business day. Each copy was  
14 enclosed in an envelope or package designated by the express service  
15 carrier; deposited in a facility regularly maintained by the express service  
carrier or delivered to a courier or driver authorized to receive documents on  
its behalf; with delivery fees paid or provided for; addressed as shown on the  
accompanying service list.

16 ☒ (By Electronic Service) By emailing true and correct copies to the persons  
17 at the electronic notification address(es) shown on the accompanying service  
18 list. The document(s) was/were served electronically and the transmission  
was reported as complete and without error.

19 Executed on January 30, 2018.

20 ☒ (FEDERAL) I declare under penalty of perjury under the laws of the United  
21 States of America that the foregoing is true and correct.

22 /s/ Stephanie N. Clark

23 Stephanie N. Clark  
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**SERVICE LIST**

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